Article 41 E

Travaux Préparatoires
(EPC 1973)

Comment:
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MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

- 1973 -

Munich, 30 September 1973
M/ 146/R 2
Original: English/French/German

CONFERENCE DOCUMENT

Drawn up by: General Drafting Committee

Subject: Convention: Articles 27 to 54
(4) Für die Anwendung des Absatzes 3 werden den in einem Staat eingereichten Anmeldungen die internationalen Anmeldungen gleichgestellt, für die dieser Staat benannt ist.

(5) Kann für einen Vertragsstaat ein Beteiligungssatz nicht nach den Absätzen 3 und 4 ermittelt werden, so legt ihn der Verwaltungsrat im Einvernehmen mit diesem Staat fest.

(6) Artikel 37 Absätze 3 und 4 ist auf die besonderen Finanzbeiträge entsprechend anzuwenden.


(8) Die in einem bestimmten Haushaltsjahr gezahlten besonderen Finanzbeiträge müssen in vollem Umfang zurückgezahlt sein, bevor in späteren Haushaltsjahren gezahlte besondere Finanzbeiträge ganz oder teilweise zurückgezahlt werden.

Artikel 39
Vorschüsse

(1) Die Vertragsstaaten gewähren der Organisation auf Antrag des Präsidenten des Europäischen Patentamts Vorschüsse auf ihre Zahlungen und Beiträge in der vom Verwaltungsrat festgesetzten Höhe. Diese Vorschüsse werden auf die Vertragsstaaten im Verhältnis der Beiträge, die von diesen Staaten für das betreffende Haushaltsjahr zu zahlen sind, aufgeteilt.

(2) Artikel 37 Absätze 3 und 4 ist auf die Vorschüsse entsprechend anzuwenden.

Artikel 40
Haushaltsplan


(2) Der Haushaltsplan ist in Einnahmen und Ausgaben auszugleichen.

(3) Der Haushaltsplan wird in der Rechnungseinheit aufgestellt, die in der Finanzordnung bestimmt wird.

(4) For the purpose of paragraph 3 international applications in respect of which any State is designated shall be regarded as applications filed in that State.

(5) Where, in respect of any Contracting State, its scale position cannot be established in accordance with paragraph 3, the Administrative Council shall, with the consent of that State, decide its scale position.

(6) Article 37, paragraphs 3 and 4, shall apply mutatis mutandis to the special financial contributions.

(7) The special financial contributions shall be repaid together with interest at a rate the same for all Contracting States. Repayments shall be made in so far as it is possible to provide for this purpose in the budget; the amount thus provided shall be distributed among the Contracting States in accordance with the scale mentioned in paragraphs 3 and 5 above.

(8) The special financial contributions remitted in any accounting period shall be wholly repaid before any such contributions or parts thereof remitted in any subsequent accounting period are repaid.

Artikel 39
Advances

(1) At the request of the President of the European Patent Office, the Contracting States shall make advances to the Organisation, on account of their payments and contributions, within the limit of the amount fixed by the Administrative Council. Such advances shall be apportioned in proportion to the amounts due by the Contracting States for the accounting period in question.

(2) Article 37, paragraphs 3 and 4, shall apply mutatis mutandis to the advances.

Artikel 40
Budget

(1) Income and expenditure of the Organisation shall form the subject of estimates in respect of each accounting period and shall be shown in the budget. If necessary, there may be amending or supplementary budgets.

(2) The budget shall be balanced as between income and expenditure.

(3) The budget shall be drawn up in the unit of account fixed in the Financial Regulations.
MÜNCHNER DIPLOMATISCHE KONFERENZ
ÜBER DIE EINFÜHRUNG EINES EUROPÄISCHEN PATENTERTEILUNGSVERFAHRENS 1973
(München, 10. September bis 6. Oktober 1973)

MUNICH DIPLOMATIC CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS, 1973
(Munich, 10 September to 6 October 1973)

CONFERENCE DIPLOMATIQUE DE MUNICH
POUR L'INSTITUTION D'UN SYSTÈME EUROPÉEN
DE DÉLIVRANCE DE BREVETS
(1973)
(Munich, 10 septembre - 6 octobre 1973)

VORBEREITENDE DOKUMENTE
ausgearbeitet von der
Regierungskonferenz über die Einführung eines europäischen Patenterteilungsverfahrens
herausgegeben von der
Regierung der Bundesrepublik Deutschland

PREPARATORY DOCUMENTS
drawn up by the
Inter-Governmental Conference for the setting up of a European System for the Grant of Patents
and published by the
Government of the Federal Republic of Germany

DOCUMENTS PRÉPARATOIRES
élaborés par la
Conférence intergouvernementale pour l'institution d'un système européen de délivrance de brevets
et publiés par le
Gouvernement de la République fédérale d'Allemagne

1972
129. A decision was first taken on the voting procedure, two procedural proposals being rejected by a majority:

- a proposal from the Swedish delegation to start with the third variant and then to vote on the second variant and finally on the first variant, if necessary;

- a proposal from the Netherlands delegation, first of all to eliminate the variant which obtained the smallest number of votes and then to vote a second time as between the two remaining variants.

The Conference decided by a majority to vote on the variants in the order 1 - 2 - 3.

130. The voting did not give a 2/3 majority for the first or for the second variant, but did give this majority for the third variant, which was therefore adopted.

131. The Italian delegation stated that it agreed with the reduction of the figure for applications in the last year but one prior to the entry into force of the Convention, from 30,000 to 25,000, as proposed by Working Party IV.

132. The drafting of paragraph 3 as thus adopted was improved by converting two sentences into separate paragraphs (new paragraphs 4 and 5).

**Article 39**

133. The Conference decided, on a proposal from the German delegation (cf. Working Document No. 9), that the advances provided for in Article 29 should attract interest. Consequently, a new paragraph 2 was introduced, which refers to Article 37, paragraph 4.
MINUTES

of the

6th meeting of the Inter-Governmental Conference
for the setting up of a European System
for the Grant of Patents
(Luxembourg, 19 to 30 June 1972)
Article 39 (45)

Advances

At the request of the Organisation, the Contracting States shall make advances, on account of their payments and contributions, to meet a need previously recognised by the Administrative Council. Such advances shall be apportioned in proportion to the amounts estimated to be due by the Contracting States for the accounting period in question.
DRAFT CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

(Stage reached on 20 May 1972)
In conclusion, the Working Party recorded its agreement on the principle of the payment of amounts under Article 43, it being understood that these amounts would be those applicable on the date when the State ceased to be party to the Convention. This principle is contained in Article 171a, paragraph 2.

**Article 41** (Cover for expenditure)

**Article 45** (Advances)

**Article 52** (Provisional budget)

**Article 52d** (Financial Regulations), letter (e)

17. After examining the proposals relating to these Articles, drawn up by the "Community Patent" Experts' Working Party of the EEC at its meeting of 8/18 June 1971 (cf. BR/126/71), the Working Party recorded its agreement on these proposals.

**Article 52d** (Financial Regulations) letter (f)

18. The German delegation suggested that the Working Party should supplement Article 52d by making explicit provision for the establishment of a Budget and Finance Committee.

The grounds for this suggestion, set out in working document No. 1 of Working Party IV dated 22 February 1972, are, basically, to enable decisions of the Administrative Council on matters relating to the budget and finances to be prepared by a committee of experts.

BR/178 e/72 eld/PA/prk .../...
MINUTES

of the 4th meeting of Working Party IV
(Luxembourg, 22 to 24 February 1972)


A representative of the International Patent Institute at The Hague attended the meeting as an observer. Representatives of WIPO, the Commission of the European Communities and the General Secretariat of the Council of Europe sent their apologies for being unable to be present. (1)


(1) The list of participants is annexed.
(4) Artikel 43 Absätze 5 und 6 ist auf die besonderen Finanzbeiträge entsprechend anzuwenden.


(6) Die in einem bestimmten Haushaltsjahr gezahlten besonderen Finanzbeiträge müssen in vollem Umfang zurückgezahlt sein, bevor in späteren Haushaltsjahren gezahlte besondere Finanzbeiträge ganz oder teilweise zurückgezahlt werden.

(4) Article 43, paragraphs 5 and 6, shall apply mutatis mutandis to the special financial contributions.

(5) The special financial contributions shall be repaid together with interest at a rate to be prescribed in the Financial Regulations. Repayments shall be made in so far as it is possible to provide for this purpose in the budget, and the amount thus provided shall be distributed among the Contracting States in accordance with the scale mentioned in paragraph 3 above.

(6) The special financial contributions remitted in any accounting period shall be wholly repaid before any contributions or parts thereof remitted in any subsequent accounting period are repaid.

Artikel 45
Vorschüsse

Die Vertragsstaaten gewähren auf Antrag des Europäischen Patentamts Vorschüsse auf ihre Zahlungen und Beiträge im Rahmen des vom Verwaltungsrat anerkannten Bedarfs. Diese Vorschüsse werden auf die Vertragsstaaten im Verhältnis der Beiträge, die von diesen Staaten für das betreffende Haushaltsjahr zu zahlen sind, aufgeteilt.

Artikel 45
Advances

At the request of the European Patent Office, the Contracting States shall make advances, on account of their payments and contributions, to meet a need previously recognised by the Administrative Council. Such advances shall be apportioned in proportion to the amounts estimated to be due by the Contracting States for the accounting period in question.

Artikel 46
Mittel für unvorhergesehene Ausgaben

(1) Im Haushaltsplan des Europäischen Patentamts können Mittel für unvorhergesehene Ausgaben veranschlagt werden.

(2) Die Verwendung dieser Mittel durch das Europäische Patentamt setzt einen vorherigen Beschluss des Verwaltungsrats voraus.

Artikel 46
Apropritions for unforeseeable expenditure

(1) The budget of the European Patent Office may contain appropriations for unforeseeable expenditure.

(2) The employment of these appropriations by the European Patent Office is subject to a prior decision by the Administrative Council.

Artikel 47
Haushaltsplan

(1) Alle Einnahmen und Ausgaben des Europäischen Patentamts werden für jedes Haushaltsjahr veranschlagt und in den Haushaltsplan eingesetzt.

(2) Der Haushaltsplan ist in Einnahmen und Ausgaben auszugleichen.

Artikel 47
Budget

(1) Income and expenditure of the European Patent Office shall form the subject of estimates in respect of each accounting period and shall be shown in the budget.

(2) The budget shall be balanced as between income and expenditure.

Artikel 48
Bewilligung der Ausgaben

(1) Die in den Haushaltsplan eingesetzten Ausgaben werden für ein Haushaltsjahr bewilligt, soweit die Finanzordnung nichts anderes bestimmt.

Artikel 48
Authorisation for expenditure

(1) The expenditure entered in the budget shall be authorised for the duration of one accounting period, unless any provisions to the contrary are contained in the Financial Regulations.
ZWEITER VORENTWURF EINES ÜBEREINKOMMENS ÜBER EIN EUROPÄISCHES PATENTerteilungsverfahren

sowie

ERSTER VORENTWURF EINER AUSFÜHRUNGSORDNUNG ZUM ÜBEREINKOMMEN ÜBER EIN EUROPÄISCHES PATENTerteilungsverfahren

und

ERSTER VORENTWURF EINER GEBÜHRENORDNUNG

SECOND PRELIMINARY DRAFT OF A CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

with

FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS TO THE
CONVENTION ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT
OF PATENTS

and

FIRST PRELIMINARY DRAFT OF THE RULES RELATING TO FEES

SECOND AVANT-PROJET DE CONVENTION INSTITUANT UN
SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS

ainsi que

PREMIER AVANT-PROJET DE RÈGLEMENT D’EXÉCUTION DE LA CONVENTION
INSTITUANT UN SYSTÈME EUROPÉEN DE DÉLIVRANCE DE BREVETS

et

PREMIER AVANT-PROJET DE RÈGLEMENT RELATIF AUX TAXES

— 1971 —
Article 42e

11. Article 42e regulates the conditions under which the European Patent Office can ask for advances. Working Party IV examined the principle of the matter and agreed to continue the examination during its meeting in October.

Article 42f

12. Still with the object of allowing the European Patent Office to meet all the situations which might arise and, more particularly, to put it in a position to deal with any unforeseeable expenditure during the running-in period, Article 42f makes it possible to introduce an item for unforeseeable expenditure into the EPO's budget, the employment of the appropriations assigned to this item being subject to a prior decision by the Administrative Council.

Article 42g

13. Article 42g applies to the transitional period and provides for a recourse to special repayable contributions during the running-in period. This Article also refers to procedures for repaying these contributions. The members of Working Party IV agreed that these provisions, which are provisionally placed in an Article 42g, should appear in the transitional provisions.

The delegations agreed to study this Article in more detail during their meeting in October.
MINUTES
of the second meeting of Working Party IV
(Luxembourg, 6 - 9 July 1970)

1. The second meeting of Working Party IV was held in Luxembourg, from 6 to 9 July 1970 with Mr. E. ARMITAGE, Comptroller General of the Patent Office, London, in the chair.

As at the first meeting, the representatives of the International Patent Institute at The Hague took part in the meeting as observers. The representatives of the Council of Europe and of WIPO/BIRDII apologised for their absence (1).

I. - ORGANISATION OF THE WORK

2. On the proposal of the Chairman, Working Party IV decided to organise its work as follows:

(1) The list of participants is annexed to this document.

BR/GT IV/32 e/70 ond/PA/bm
The Working Party also confirmed that the Administrative Council should previously determine the limits within which the European Patent Office may request advances.

20. In the view of the Working Party the European Patent Office should be able, for the purpose of covering short-term financial needs, not only to request advances from the Contracting States, but also to obtain bank loans, with the approval of the Administrative Council. However, the Working Party decided not to lay down this option, which, in its view, went without saying in view of the legal personality of the European Patent Office, in a particular Article, in order to avoid unnecessarily limiting the powers of action of the European Patent Office in this respect by a restrictive text.

21. The Working Party decided not to include in the Convention a provision to the effect that belated payment of advances was to be subject to interest. In its view it would be a mistake to attach too great importance to this problem. Paragraph 2 was therefore deleted.

Article 42f (now Article 42e) - Appropriations for unforeseeable expenditure

22. The Working Party retained this provision, whereby appropriations for unforeseeable expenditure may be contained in the budget, in the same form as in BR/GT IV/31/70. As observed by the Working Party, this Article together with other provisions makes the setting up of an operational fund and a reserve fund superfluous.

BR/GT IV/41 e/70 lor/RT/1b
17. The Working Party did not feel it necessary for the Convention to contain a special provision for the first few years of operation of the European Patent Office, as had previously been contained in Article 42g. In paragraph 5 of the new Article 42c, the Working Party laid down the obligation of the European Patent Office to pay interest on the special financial contributions of the Contracting States in such a way as to make it applicable in all cases in which special financial contributions are made.

18. With regard to the repayment of financial contributions, the Working Party felt it expedient to make a new provision, under which contributions made earlier must be repaid before contributions made later may be repaid (new paragraph 6).

Article 42c (now Article 42d) - Advances

19. In the view of the Working Party it is reasonable that the European Patent Office should be able to demand advances not only on the special financial contributions of the Contracting States, but also on the payments which they are to make under Article 42b. The European Patent Office needs, particularly later when there are no special financial contributions to be paid, may be subject to short-term financial needs especially in the case of the due dates for payment laid down by the Administrative Council not being observed. The Working Party agreed that the advances should not necessarily be requested in the same budgetary period as that in respect of which the appropriations had been made, but in the interest of smooth transition from one budgetary period to the next they might be requested and granted in the previous year.

BR/GT IV/41 e/70 lor/RT/pj
MINUTES

of the third meeting of Working Party IV
(Luxembourg, 13-15 October 1970)

1. The third meeting of Working Party IV was held in Luxembourg, from 13 to 15 October 1970, with Mr. E. ARMITAGE, Comptroller General, Patent Office, London, in the Chair.

The representatives of the International Patent Institute at The Hague and of WIPO/BIRPI took part in the meeting as observers. The representative of the General Secretariat of the Council of Europe apologised for his absence. (1)

2. The Working Party began by examining, on the basis of various working documents (BR/GT IV/31/70 and BR/GT IV/36/70 with Addendum), the financial provisions of the First Preliminary Draft Convention establishing a European System for the Grant of Patents (Articles 42-53 and Article 187). It adopted these provisions as set out in BR/56/70.

(1) The list of participants is given in the Annex.
Article 42e
Advances

(1) At the request of the European Patent Office, the Contracting States shall make advances in respect of the payments under Article 42(b) and contributions under Article 42(c). These advances shall be divided among the Contracting States under the same conditions as their payments and contributions for the year in question.

(2) Article 42b, paragraphs 5 and 6, shall apply mutatis mutandis to the advances referred to in this Article.
INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

- Secretariat -

PRELIMINARY DRAFT CONVENTION
FOR A EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Articles 42 to 42 g, 43 to 53 and 187

Texts either approved in principle by Working Party IV
or drawn up by its Drafting Committee
(meeting 6 to 9 July 1970)

compared synoptically with
the financial provisions of the Draft Convention relating to a European
Patent Law as drafted by the EEC "Patents" Working Party

BR/GT IV/31 e/70 rti/PB/sw
Article 39

Advances

(1) At the request of the President of the European Patent Office, the Contracting States shall make advances to the Organisation, on account of their payments and contributions, within the limit of the amount fixed by the Administrative Council. Such advances shall be apportioned in proportion to the amounts due by the Contracting States for the accounting period in question.

(2) Article 3, paragraphs 3 and 4, shall apply mutatis mutandis to the advances.